

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Do you have any idea of the number of times you have prosecuted organisations or companies for breaches relating to environmental triggers under the EPBC Act so far, or do you not have any idea on that?

Dr Dripps: It is certainly quite a lot of times. We could take the precision around that on notice, if you do not mind.

Senator RUSTON: Sure, that would be handy, particularly in relation to the criminal provisions, because some of that was one of the things raised yesterday, and a lot of the information we received was in relation to the federal capacity for criminal proceedings as opposed to just civil proceedings.

Answer:

1. The department uses a range of compliance activities, consistent with the *Compliance and Enforcement Policy: Environment Protection and Biodiversity Conservation Act 1999*. This includes proactive engagement to encourage voluntary compliance; civil and administrative sanctions such as enforceable undertakings, remediation determinations and infringement notices; and, for more serious breaches, civil penalties and criminal prosecution.

The EPBC Act was amended in 2007 to provide for a wider range of civil and administrative remedies in addition to the existing civil and criminal penalties. The department also expanded its compliance and enforcement capacity at this time. A summary of the compliance and enforcement outcomes before and after these changes are provided below:

Breaches relating to Matters of National Environmental Significance 2000 to 2007

Civil Penalties

Actions with a significant impact on a declared Ramsar wetland (16) – 1

Administrative and Civil Remedies

Conservation agreement (s305) – 1

Breaches relating to Matters of National Environmental Significance 2008 to current

Criminal Penalties

Taking action before decision made in relation to referral (s77A) – 2

Civil Penalties

Actions with a significant impact on listed species or ecological community (s18) – 2

Breach of particular manner requirements [for referral] (s77A) – 1

Administrative and Civil Remedies

Remediation determinations (s480D) – 5

Enforceable Undertakings (s486DA) – 14

Infringement Notices for breach of conditions (s142B) – 13

Variation to conditions [as a result of an alleged contravention] (s143) – 2

Conservation agreement dealing with remediation measures (s307A) – 1

Conservation agreement (s305) – 1

Federal Court injunction to prevent an ongoing breach (s475) – 1

Directed environmental audit [due to potential breach of approval conditions] (s458) – 4

Suspension of approval (s144) – 1

Revocation of approval (s145) – 1

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The Committee asked:

Dr Dripps: In 2008-09 the department worked with Dr Hawke to undertake the review. The department worked with the government to prepare the government's response to the review, which was released in 2011, and the department has been pursuing the government response elements to that review over the past couple of years.

Senator RUSTON: In that review, do you remember in your deliberations or discussions, or the consultation, any discussion of a specific water trigger? If so, was it ever included in any of the findings or in the report, to your knowledge?

Dr Dripps: It was, Senator. I do not recall the detail, nor do I have it with me—I was not prepared for this line of questioning. We can provide you with the relevant Hawke review recommendations and the government response immediately after we leave here this afternoon.

Senator RUSTON: Sure. I suppose what I am trying to get at is: when was the idea of a water trigger first raised as a specific inclusion in the EPBC Act and by whom? Was it when the private senator's legislation was brought in by Senator Waters, or was it the member for New England—or was there some time previously when the debate had been had? That was the purpose of the—

Dr Dripps: That question has come up many times over the last couple of years as there have been policy deliberations about the impacts of coal-seam gas and large coalmines. The first policy discussions I recall about a water trigger were probably in late-2011.

Senator RUSTON: Okay, thanks. If you could give us some more detail, that would be great—just generally.

Answer: The issue of regulation of water extraction and use was raised in 2009 during consultations for, and in written submissions to, the Independent Review of the EPBC Act. The Review Report recommended that a better method of addressing the adverse impacts of water extraction on protected matters would be to require strategic assessments for all water plans that authorise actions that, as a whole, have, will have or are likely to have a significant impact on a protected matter. The Review recommended that the Murray Darling Basin Plan prepared under the *Water Act 2007* (Cth) be strategically assessed to ensure activities authorised by the Plan are compliant with the Act.

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The Committee asked:

Senator RUSTON: We have heard a number of criticisms in the evidence we have received that the level of consultation with industry and the public in relation to this particular amendment bill was very scant. Did you have a specific industry and community consultation program in relation to this bill or not?

Dr Dripps: We have had consultation with industry on this bill. My colleague is currently finding the page with the details. There have also been extensive consultations over the last couple of years around the operation of the EPBC Act and matters related to that. So we can provide information on who was consulted, and certainly who was invited, and those matters. Do you want that now?

Senator RUSTON: No, that is fine—if you just want to table it, that would be great.

Answer:

The Department is well aware of the range of stakeholder views in relation to the EPBC Act, and has conducted extensive consultation on the Independent Review of the EPBC Act, the Government Response to the Independent Review, and the EPBC reform package as outlined below. These consultations have canvassed a range of issues in relation to the EPBC Act, including the protection of water resources.

Consultation during Independent Review of the EPBC Act.

Public consultation

- The first stage of the public consultation process was the release of a Discussion Paper and a call for public submissions. 220 public submissions were received.
- The second stage of the public consultation process was a series of face-to-face consultations, with meetings being held in each of the Australian capital cities. Dr Hawke met with a range of stakeholders including environment and industry NGOs, lawyers and academics, government representatives and individuals. Public consultation sessions were held in all states and territories between February and May 2009.
- The third stage of the public consultation process was the release of an Interim Report on the review on 29 June 2009. Public comment was invited on the Interim Report with 119 comments received. Further public consultation workshops were held with non-government organisations, academics, and industry representatives between August and September 2009.

Government Consultation

- State and territory ministers were advised of the commencement of the review and Dr Hawke met with representatives from all state and territory governments as part of the public consultation process.

Consultation with Statutory bodies

- Dr Hawke wrote to, and met with, representatives from the Threatened Species Scientific Committee (TSSC), Australian Heritage Council (AHC) and the Indigenous Advisory Council (IAC).

Consultation on the Government Response to the Independent review of the EPBC Act

- The Minister for Sustainability, Environment, Water, Population and Communities convened five stakeholder roundtables between February and May 2011, meeting with more than 85 experts and representatives of key groups, including land based industries; environment and heritage non-government organisations; scientists and experts; and peak bodies.

Consultation on the EPBC Act reform package.

- Since the release of the Government's Response to the Independent Review, the department has undertaken consultation in relation to a range of specific reforms that were outlined in the Government Response. During the period March-November 2012, 8 stakeholder workshops and briefings have been held.

EPBC Amendment Bill 2013

- Consultations on the bill were undertaken on 18 and 20 March 2013 with industry and environment non-government organisation stakeholders respectively. Information on the organisations that were invited, and those which attended those consultations, are in the attached document.
- Further stakeholder workshops with industry and environment non-government organisations were held on 1 May 2013, including consultation on principles for determining significant impacts in relation to the new matter of national environmental significance (should it be passed by the Parliament and receive royal assent). A list of the organisations that were invited, and those which attended the workshop, are in the attached document.

STAKEHOLDER BRIEFINGS – MARCH 2013

| Industry 18 March 2013 | |
|---|---|
| Attended | Invited but unable to attend |
| Arrow Energy | Adani |
| Australian Coal Association | AGL |
| Australian Petroleum Production and Exploration Association | AMCI |
| BHP Billiton | Anglo American |
| Business Council of Australia | Australian Chamber of Commerce and Industry |
| Minerals Council of Australia | Australian Industry Group |
| National Farmers Federation | Australian Local Government Association |
| New South Wales Irrigators Council | Moolarben |
| Origin Energy | National Irrigators Council |
| Arrow Energy | Planning Institute of Australia |
| Australian Coal Association | Shenhua |
| Australian Petroleum Production and Exploration Association | Tourism and Transport Australia |
| BHP Billiton | Waratah |
| Business Council of Australia | |
| Minerals Council of Australia | |
| National Farmers Federation | |
| New South Wales Irrigators Council | |
| Origin Energy | |
| Ports Australia | |
| Property Council of Australia | |
| Rio Tinto Australia | |
| Santos | |
| Xstrata Coal Pty Ltd | |

Non-government organisations 20 March 2013

| Attended | Invited but unable to attend |
|---|---|
| Australian Network of Environmental Defenders Offices | ACT Conservation Council |
| Conservation Council of SA | Australian Conservation Foundation |
| Humane Society International | Australian Council of National Trusts |
| National Parks Australia Council | BirdLife Australia |
| Nature Conservation Council of NSW | Conservation Council of WA |
| WWF Australia | Environment Tasmania |
| | Environment Victoria |
| | Greenpeace Australia |
| | Indigenous Advisory Committee |
| | National Environmental Law Association |
| | National Working Group of NRM Regional Bodies |
| | Queensland Conservation Council |
| | The Nature Conservancy |
| | The Wilderness Society |
| | Wentworth Group of Concerned Scientists |

STAKEHOLDER BRIEFINGS – MAY 2013

| Industry and State Government Observers – 1 May 2013 | |
|---|--|
| Attended | Invited but unable to attend |
| Adani | AGL Upstream Gas Investments Pty Limited |
| Anglo American | AMCI |
| Arrow Energy | Australian Chamber of Commerce and Industry |
| Australian Coal Association | Australian Council of Superannuation Investors |
| Australian Petroleum Production and Exploration Association (APPEA) | Blue Energy |
| BHP Billiton | Comet Ridge |
| EnergyAustralia | Dart Energy |
| Minerals Council of Australia | Metgasco Ltd |
| National Farmers' Federation | Moolarben Coal Mines Pty Ltd |
| Origin Energy | National Irrigators Council |
| Rey Resources | NSW Minerals Council |
| Xstrata Coal Pty Ltd | Ports Australia |
| Aboriginal Land Council | Senex Energy |
| AMEC | Shell Australia |
| Australian Industry Group | Waratah Coal |
| Business Council of Australia | Aquila Resources Limited |
| Carabella Resources Ltd | Aust-Pac Capital Pty Ltd |
| Centennial Coal | Bengalla Mining Company Pty Ltd |
| Cobbora Holding Company Pty Ltd | Bulga Coal Management Pty Ltd |
| Coalpac Highway | Cockatoo Coal Ltd |
| NSW Minerals Council | Drake Coal Pty Ltd |
| QGC | Ellensfield Coal Management Pty Ltd |

| | |
|--|---|
| QLD Dept Environment and Heritage Protection | Enhance Place Pty Limited |
| QLD Office of the Coordinator-General | IMC Mining Group Pty Ltd |
| QLD Department of Health | Indicoal Mining Australia Pty Ltd |
| Rio Tinto | Linc Energy Limited |
| Shenhua Watermark | Metro Coal Ltd |
| Minter Ellison (representing Shenhua Watermark) | New Hope Corporation Ltd |
| VIC Department of Planning and Community Development | New Acland Coal Pty Ltd |
| Department of Resources Energy and Tourism | Resources Capital International |
| NT Environment Protection authority | Springsure Creek Coal Pty Ltd |
| | Stratford Coal Pty Ltd |
| | Syntech Resources Pty Ltd |
| | The Griffin Group |
| | Tonford Pty Ltd |
| | Wyong Coal Pty Ltd (T/A Wyong Areas Coal joint Venture) |
| | Hancock Prospecting Pty Ltd |
| | Mineralogy Pty Ltd |

Non-government organisations 1 May 2013

| Attended | Invited but unable to attend |
|---|---|
| Australian Network of Environmental Defenders Offices | ACT Conservation Council |
| Conservation Council of WA | Australian Conservation Foundation |
| Environment Institute of Australia and New Zealand | Australian Council of National Trusts |
| Nature Conservation Council NSW | BirdLife Australia |
| National Parks Australia Council | Conservation Council of South Australia |
| Nature Conservation Council of NSW | Environment Tasmania |
| The Nature Conservancy | Environment Victoria |
| | Greenpeace Australia Pacific |
| | Humane Society International |
| | Indigenous Advisory Committee |
| | National Environmental Law Association |
| | National Working Group of NRM Regional Bodies |
| | Queensland Conservation Council |
| | WWF Australia |
| | The Wilderness Society |
| | Wentworth Group of Concerned Scientists |

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

CHAIR: The other issue is the definition of 'large coalmining development'. Could someone tell me how that is being done, because that has been raised by the Minerals Council again as a problem.

Mr Knudson: For the purposes of the Environment Protection and Biodiversity Conservation Act, 'large coalmining development' is defined under the act in section 528 as:

... any coal mining activity that has, or is likely to have, a significant impact on water resources (including any impacts of associated salt production and/or salinity):

(a) in its own right; or

(b) when considered with other developments, whether past, present or reasonably foreseeable developments.

CHAIR: The issue of the reverse onus of proof—can you advise us how that operates?

Dr Dripps: Sorry, could you expand on the question?

CHAIR: The Minerals Council submission at 5.2 on page 13 says:

The Water Resource trigger for CSG and Large Coal Mining developments creates conditions unlike any other mNES; that is the onus of proof is reversed for a contravention of the civil penalty provisions for unauthorised coal mining developments (which may significantly impact a water resource). Where proceedings are instigated for a contravention of the proposed section 24D, it is up to the proponent to prove that the action is authorised. This reverse onus of proof creates a potential situation of moral hazard and may expose the proponent to potentially vexatious claims.

Dr Dripps: Given the complexity of that legal question, would we be able to take that question on notice and get a response to you as soon as we can after the hearings?

Answer:

Proposed section 24D(4) sets out a number of circumstances in which the civil penalty provisions in proposed section 24D will not apply to an action even where a person has taken an action as described in section 24D that has had, will have or is likely to have a significant impact on a water resource. Proposed section 24D(5) places an evidentiary burden on the person seeking to show that one of the matters in section 24D(4) exists.

Proposed section 24D(4) therefore operates as an exemption from liability for a civil penalty. It is not specified in the EPBC Act who bears the evidential burden of showing that an exemption from the civil penalty provisions relating to other matters of national environmental significance. It is current drafting practice, where a civil penalty provision contains an exception, to specify whether relying on the exception is something for the prosecution or the defendant needs to prove.

The proposed provision places the evidentiary onus on the person seeking to show that an exception exists. This is because the matters which a person would have to show to rely on proposed section 24D are easily adduced by the person wishing to rely on those matters and the effort required for discovery would not place an onerous burden upon that person.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator WATERS: Could you, if possible, provide the committee with a list of projects that are at that crucial stage of having received their IESC advice but have not yet had the minister's proposed decision? Likewise, if there are projects that fit within one of those other windows that you describe, Mr Barker, as to what are we really talking about here—what could possibly either be covered or just miss out on being covered, depending on when this bill passes. That would be very helpful, thanks.

Dr Dripps: Yes.

Answer: Projects on which IESC advice has been provided, and for which there is not yet (at 23 April 2013) a proposed decision, are as follows:

- Moolarben Stage 2 (EPBC reference 2008/4444)
- Kevins Corner Project (EPBC reference 2009/5033)
- Surat Coal Seam Gas Project (EPBC reference 2010/5344)
- Foxleigh Coal Mine Extension (EPBC reference 2010/5421)
- Drake Open Cut Coal Mine (EPBC reference 2010/5457)
- The Range Project (EPBC reference 2011/5860)
- Drayton South Coal Project (EPBC reference 2011/5911)
- Newlands Coal Extension Project (EPBC reference 2011/5968)
- Mt Penny Coal Project (EPBC reference 2011/6026)
- Cobbora open cut coal mine (EPBC reference 2011/ 6158)
- Stratford Mining Complex (EPBC reference 2011/6176)

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Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator WATERS: If I could go to my final question: you mention in your submission the impact of the amendment that was made in the House about the fact that this new water power, should it pass the Senate and commence, is not then able to be handed off to state governments to make that final approval decision. Could you outline for me whether you provided the minister with any advice around that issue?

Dr Dripps: I am just trying to recall, Senator. We certainly had a number of discussions about that issue. Whether we provided him with formal advice would be something that we would have to take on notice and check.

Senator WATERS: Sure. And did you provide advice on whether or not, given that one of the many MNEs to be—water—was to going to stay with the federal government, the implications that may have for administration if the other MNEs were able to be handed away?

Dr Dripps: Again, we would have to take that on notice and check the records for you. As I said, there were certainly discussions about that matter. Whether in fact there was formal advice provided, I am not certain.

Answer:

The department provided advice to the Minister regarding potential amendments relating to approval bilateral agreements and the proposed new matter of national environmental significance.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator WATERS: Could you confirm for me: has there ever been any coalmine or coal-seam gas project that has been refused under the EPBC Act?

Dr Dripps: Again, we would have to check the records of the history of that act. None of us have been here for the entire time.

Answer:

One coal mine project received a 'clearly unacceptable' decision under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). This project was the Galilee Coal Project (EPBC 2008/4366). The 'clearly unacceptable' decision made on 5 September 2008.

No coal seam gas project that has proceeded to assessment has been refused under the EPBC Act.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

The EPBC Act defines a 'water resource' as:

- (a) surface water or ground water; or
- (b) a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and
- (c) includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).

However, the bill does not identify which water resources would be matters of national environmental significance.

1. Do you know which water resources would be deemed to be matters of national environmental significance? That is, water resources in which geographic locations would be MNES (for example, the Great Artesian Basin, the Murray Darling Basin)?

Answer:

The proposed protection, in relation to such coal seam gas and large coal mining development, is for a “water resource” as defined in the Bill.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: Item 25 requires that there should be a review of the operation of the Act. What is the time frame for this review?

Answer:

A statutory timeframe has not been set for the review of the amendments.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: On what grounds was the exemption for Regulatory Impact Statement (RIS) granted? Has this occurred before, if so when?

Answer:

The exemption from the Regulatory Impact Statement requirements was sought as part of the Cabinet process, and as such is Cabinet-In-Confidence.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: Can you please provide the Committee with a copy of the request for exemption for the RIS?

Answer:

The exemption from the Regulatory Impact Statement requirements was sought as part of the Cabinet process, and as such is Cabinet-In-Confidence.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: When was this Bill first drafted?

Answer:

Drafting of the Bill proceeded over the period February 2013 until 11 March 2013.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

**Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]**

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: What consultation has been had and with whom in drafting the EPBC Amendment Bill 2013? Could you please outline specific meetings or discussions with farmers, community and industry?

Answer:

Consultation was not undertaken on the detailed text of the Bill prior to its introduction and consideration by the Parliament.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

**Environment Protection and Biodiversity Conservation Amendment Bill 2013
[Provisions]**

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: If this Bill is passed, what will be the impact on the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development?

Answer:

The Bill does not impact on commitments by governments outlined in the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

Environment Protection and Biodiversity Conservation Amendment Bill 2013 [Provisions]

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: Has the Department provided any feedback to the Government about the success or otherwise of IESC advice under the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development?

Answer:

The Minister is required to obtain IESC's advice on coal seam gas and large coal mining developments. The department provides advice to the Commonwealth Environment Minister in response to IESC advice on project proposals that are assessed by the Commonwealth Department of Sustainability, Environment, Water, Population and Communities.

The IESC's role, as set out in legislation, is to examine proposals where there is likely to be a significant impact on water resources, including any impacts of associated salt production and/or salinity. Under the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development, the IESC may also provide advice to the Australian Government Environment Minister on matters related to a matter of national environmental significance in accordance with the EPBC Act (upon request). In addition, the IESC may provide advice to signatory governments on matters within the scope of the Committee's expertise, if supported by the Australian Government Environment Minister.

The following tables outline the number of projects referred to the IESC by jurisdiction to date, and also the number of projects that were referred to the interim IESC.

| Projects referred to the IESC | |
|--------------------------------|--------------------|
| Requesting jurisdiction | Number of projects |
| Commonwealth | 20 |
| Queensland | 2 |
| Joint Commonwealth/ Queensland | 1 |
| New South Wales | 0 |
| South Australia | 0 |
| Victoria | 0 |

| Projects referred to the interim IESC | |
|--|---------------------------|
| Requesting jurisdiction | Number of projects |
| Commonwealth | 23 |
| Queensland | 0 |
| New South Wales | 0 |
| South Australia | 0 |
| Victoria | 0 |

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE
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Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: What is the Department's view on the effectiveness of the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development?

Answer:

Assessing the effectiveness of the implementation of the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development is a matter for the Council of Australian Governments' Reform Council. The COAG Reform Council has released the first assessment report on the NPA, which is available at http://www.coagreformcouncil.gov.au/reports/docs/CSG/CSG_first_assessment_report.pdf.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

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The Committee asked:

Senator MCKENZIE: The Lock the Gate Alliance strongly support the bill and want existing applications to come under it – if this Bill is passed, what transitional arrangements would be in place?

Answer:

As outlined in the department's submission to the Inquiry, the transitional arrangements outlined in the Bill provide that, for a coal seam gas or large coal mining project that is currently undergoing assessment, the new water resources trigger is able to apply. Application of the new water resources trigger to a project currently undergoing assessment under the EPBC Act is subject to a decision by the Commonwealth Environment Minister that it should apply. The new water resources trigger cannot apply to projects where:

- there is a final approval decision in place for the proposal; or
- final advice has been provided by the Independent Expert Scientific Committee (IESC) to the Commonwealth Environment Minister and there is a proposed decision on the project; or
- IESC advice has been provided to the relevant state or territory minister before 13 March 2013, where Commonwealth approval under the EPBC Act is not required.

ENVIRONMENT AND COMMUNICATIONS LEGISLATION COMMITTEE

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[Provisions]**

Public Hearing – Thursday, 18 April 2013

Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: There is some confusion surrounding the Bill as to what ‘significant impact’ means. How would the Department define it?

Answer:

As indicated during the inquiry hearings on 18 April 2013, the department’s existing EPBC Guidelines define a significant impact as one which is important, notable, or of consequence, having regard to its context or intensity. Whether or not an action is likely to have a significant impact depends upon the sensitivity, value, and quality of the environment which is impacted. It also depends upon the intensity, duration, magnitude and geographic extent of the impacts.

A priority for the department is the preparation of significant impact guidelines for the proposed new matter of national environmental significance. These guidelines are expected to elaborate on the matters relevant to determining whether a proposed development is likely to have a significant impact on a water resource.

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[Provisions]

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Sustainability, Environment, Water, Population and Communities portfolio

The Committee asked:

Senator MCKENZIE: Is there an agreed definition of a water resource of parties subject to the National Partnership Agreement on Coal Seam Gas and Large Coal Mining Development?

Answer:

The National Partnership Agreement defines a water resource in Part 6 – Governance Arrangements (Page 7):

Interpretation

For the purposes of this Agreement:

- a) *Water resources means:*
 - i. *surface water or ground water; or*
 - ii. *a watercourse, lake, wetland or aquifer (whether or not it currently has water in it); and includes all aspects of the water resource (including water, organisms and other components and ecosystems that contribute to the physical state and environmental value of the water resource).*